

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION,

DALLAS WADE BUTLER,

Plaintiff,

v.

CIVIL ACTION NO. 2:14-cv-08328

MARVIN C. PLUMLEY,

Defendant.

ORDER

This action was referred to the Honorable Dwane L. Tinsley, United States Magistrate Judge, for submission of proposed findings of fact and recommendation for disposition pursuant to 28 U.S.C. § 636(b)(1)(B). Judge Tinsley submitted proposed findings and recommended [Docket 3] that I dismiss the plaintiff's Petition for Writ of Mandamus for Immediate Release from Custody ("Petition") [Docket 1]. Judge Tinsley's Proposed Findings and Recommendation ("PF&R") recommended I deny the petition "as being legally frivolous and failing to state a claim upon which relief can be granted." (PF&R [Docket 3], at 4).

The PF&R instructed the plaintiff that he had seventeen days to file objections to the PF&R with the court (fourteen days for the filing of objections and three days for service and mailing). (*See* PF&R [Docket 3], at 4). The PF&R further instructed the plaintiff that failure to file written objections would constitute a waiver of de novo review of the PF&R. (*See id.*). Despite this notice, rather than file objections to the PF&R, the plaintiff appealed the PF&R to the Fourth Circuit. (*See* Notice of Appellate Case Opening [Docket 4]). The Fourth Circuit noted that it "does not have

jurisdiction to grant mandamus relief against state officials, and does not have jurisdiction to review final state court orders.” (Fourth Circuit Opinion [Docket 7], at 2) (internal citations omitted). The court granted leave to proceed *in forma pauperis* but denied the petition for writ of mandamus. (*See id.* at 2-3). It also noted “[t]o the extent Butler’s filing could be construed as an appeal of the proposed findings and recommendation entered by the magistrate judge in his pending case in the district court, we lack jurisdiction to consider the appeal because the district court has not issued a final order.” (*Id.* at p.2-3).

I have reviewed the PF&R and construed the plaintiff’s appeal as an objection to it. For the reasons set forth in the PF&R and the Fourth Circuit’s opinion, I **FIND** that this court lacks jurisdiction over the Petition. The Petition [Docket 1] is **DENIED**. The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: July 31, 2014



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE